



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 15, 1996

Mr. Ron M. Pigott  
Assistant General Counsel  
Texas Department of Public Safety  
5805 N. Lamar Blvd. - Box 4087  
Austin, Texas 78773-0001

OR96-2130

Dear Mr. Piggott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101774.

The Texas Department of Public Safety (the "department") received a request for the results of a polygraph test administered to Mr. David Sutton. The requestor asserts the polygraph results are public record because the judge in the case of *State v. Richardson*, Cause No. 90-CR-3506 in the 226th District Court of Bexar County, Texas, ordered the Bexar County District Attorney's Office to release the results in response to a Motion for Disclosure of Favorable Evidence by defense counsel in the case. The requestor also asserts the state waived its right to resist her request because of the Bexar County District Attorney's alleged "open file policy." You argue the results of the polygraph exam are exempt from disclosure under sections 552.101 and 552.108 of the Government Code.

As a general rule, if a governmental body releases information to one member of the public, the act's exceptions to disclosure are waived unless the information is deemed confidential under the act. See Gov't Code, section 552.007; Open Records Decision Nos. 463 (1987), 163 (1977). In other words, the act prohibits "selective disclosure." Although protection for information protected by the act's permissive exceptions can be waived, protection for information deemed confidential by law is not ordinarily waived through "selective disclosure." See Open Records Decision Nos. 490 (1988), 463 (1987). Moreover, information exchanged between litigants in informal discovery is not considered selective disclosure for purposes of section 552.007. See Open Records Decision No. 579 (1990).

law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Attorney General has found that a copy of a polygraph examiner's report must be withheld pursuant to section 552.101 of the Open Records Act in conjunction with section 19A of the Polygraph Examiners Act, article 4413(29cc), V.T.C.S. See Open Records Decision Nos. 562 (1990), 316 (1982). Because the results of a polygraph examination are confidential by law, and because protection for information deemed confidential by law is not waived through "selective disclosure," we conclude the release by the Bexar County District Attorney of the results of the polygraph administered to Mr. David Sutton, either through an "open file policy" or by court order, does not waive the exception to disclosure under 552.101 when asserted by the department.<sup>1</sup> Therefore, the department may not release the results of the polygraph examination to the requestor.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 101774

Enclosures: Submitted documents

cc: Ms. Cynthia Hujar Orr  
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San Antonio, Texas 78205-3199  
(w/o enclosures)

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<sup>1</sup>As we resolve this matter under section 552.101, we need not address the other exception you raise.

<sup>2</sup>While we find that the information is excepted from disclosure as to this requestor, we note that polygraph examination information may not be withheld from the subject of the examination under article 4413(29cc). Open Records Decision No. 565 (1990).